IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 20 of 2003
AND
CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 21 of 2003

For Approval and Signature:

N'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER, CENTRAL EXCISE, AHMEDABAD-I

Versus

SAEED SAMSUDDIN SURATI

Appearance:
1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP Nos. 20 of 2003
MR DN PATEL for Petitioner No. 1
MR PARESH M DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 19/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In these applications which have been filed by the Commissioner of Central Excise, Ahmedabad I, reference is sought on the following question:-

"If the main noticee has settled his case under KVSS, whether immunity will be available to co-noticee even if they did not apply for immunity under the KVSS scheme where fine, penalty has already been determined in adjudication?"

2. The Additional Commissioner of Central Excise, Ahmedabad passed order dated 30.3.1998 confirming the demand of additional duty of excise totally amounting to Rs.12,16,063/- payable on the goods in question and cleared illicitly as elaborated in the relevant annexures. A show cause notice under section 11 of the Central Excise Act, 1944 ('the Act' for short) read with Rule 9 (2) of the Central Excise Rules, 1944 ('the rules' for short) came to be issued and after hearing the parties, the Additional Commissioner of Central Excise passed order dated 30.3.1998 -

(A) enforcing bank guarantees in lieu of confiscation of goods valued at Rs.10,07,570/-;

(B) confirming demand of additional duty of excise at Rs.12,16,063/-;

(C) imposing penalty of Rs.15 lakhs on M/s. Kajalwala Process (i.e. the principal noticee);

(D) imposing penalty under Rule 209A at Rs.5 lakhs on a partner of the principal noticee and on the two opponents herein at Rs.5 lakhs and Rs.3 lakhs respectively.

3. The opponents herein filed appeals before the Collector of Central Excise. During pendency of the appeals, the principal noticee M/s. Kajalwala Process filed declaration under KVSS. When the appeals reached hearing, the Collector of Central Excise noted that since the principal noticee had filed declaration under KVSS, case of the appellants (i.e. the opponents herein) also stood settled in view of the judgments of the CEGAT. Accordingly the appeals were allowed. The revenue carried the matter in Second Appeals before the CEGAT

which dismissed the appeals in view of the decision of the Tribunal in another matter. The revenue has, therefore, sought reference of the above quoted question.

3. Mr. D.N. Patel, learned Senior Central Government Standing Counsel for the applicant, has submitted that since the present opponents have not filed any declaration under KVSS, they are not entitled to any relief under the KVSS scheme.

4. On the other hand, Mr. Paresh M. Dave, learned counsel for the opponents, has relied on KVSS (Removal of Difficulties) Order 1998 which was issued by the Central Government, Ministry of Finance on 8.12.1998, in exercise of the powers under sub-section (1) of Section 97 of the Finance (No.2) Act, 1998 and which came into effect from 1.9.1998. The learned counsel also relied on the decision of the Apex court in Union of India v. Onkar S. Kanwar, 2002 (145) ELT 266.

5. Clause 2 of the aforesaid Order for removal of difficulties reads as under:

> "Where a declaration to the designated authority has been made in respect of tax arrear in relation to indirect tax enactment for the amount of duties (including drawback of duty, credit of duty or any amount representing duty), cesses, interest, fine or penalty which constitutes the subject matter of a demand notice or a show cause notice issued on or before the 31st day of March, 1998 but remaining unpaid, and pending determination on the date of making a declaration and, where, in respect of the same matter stated in the said declaration, a show cause notice has also been issued to any other person and is pending adjudication on the date of making the declaration, then, no civil proceeding for imposition of fine or penalty shall be proceeded with against such other person and in such cases the settlement in favour of the declarant under sub-section (1) of section 90 shall be deemed to be full and final in respect of such other person also on whom a show cause notice was issued on the same matter covered under the declaration."
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> (emphasis supplied)

It is thus clear that where a show cause notice has been issued to principal noticee on a subject in respect of which a KVSS declaration is filed by the

principal noticee, no civil proceeding for fine or penalty shall be proceeded against the co-noticee and in such cases the settlement in favour of the declarant shall be deemed to be full and final in respect of such other person also on whom a show cause notice was issued on the same matter covered under the declaration.

6. In Onkar S. Kanwar's case (supra), the Hon'ble Supreme Court has held that a reading of KVSS (Removal of Difficulties) Order,1998 shows that where a declaration had been made in respect of a tax arrear and where in respect of the same matter, a show cause notice had also been issued to any other person, then the settlement in favour of the declarant has to be deemed to be full and final in respect of other persons on whom show cause notices had been issued. The order has to be read as a whole. If read as a whole, it is clear that a settlement by the main declarant is to operate as full and final settlement in respect of all other persons on whom show cause notice was issued in respect of the same matter.

7. In view of the provisions of the aforesaid KVSS (Removal of Difficulties) Order, 1998 and the aforesaid observations of the Hon'ble Supreme Court, no question of law arises which the Tribunal could be directed to refer to this Court under Section 35H of the Central Excise Act, 1944.

8. The applications, therefore, stand disposed of. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)